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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,773

12/30/2003

Willard M. Wiseman

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EXAMINER

TURCHEN, JAMES R

ART UNIT

PAPER NUMBER

2109

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/748,773

Applicant(s)

WISEMAN ET AL.

Examiner

James Turchen

Art Unit

~~2112~~ 2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant claims a machine-readable medium which is further defined in the specification that it "may include data signals embodied in a carrier wave or other propagation medium". A carrier wave or other propagation medium is non-patentable subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10, 13, and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devanbu et al. (6,148,401) and *The TLS Protocol*.

Regarding claims 1, 8, 16, 23, and 26:

Devanbu et al. discloses the method and system of requesting and receiving a service for a platform (column 1 lines 34-54) and certifying the use of the service for one or more acceptable configurations of the platform (column 4 lines 25-52; claim 1). The certifier decides if the software possesses a particular property or set of properties; the property could be a security constraint, client constraint (such as system requirements), or software information (such as manufacturer, etc.). Devanbu et al. does not disclose receiving a session key for a session of the service. *The TLS Protocol* discloses providing communication privacy over the Internet (Introduction). The keys for the symmetric encryption are based on a secret negotiated by another protocol and these keys are used throughout the communication. It is inherent to store computer operations that instruct the processor in a tangible form of machine-readable medium.

It would have been obvious to one of ordinary skill in the art to combine the certifying method and system of Devanbu et al. with the method and system of *The TLS Protocol* to ensure session privacy (Introduction).

Regarding claims 2- 5, 9, 10, and 17-20:

Devanbu et al. discloses a method and system for the use of a public key system, but it does not disclose having an identifying credential comprising of an identity key. *The TLS Protocol* discloses a method and system for authenticating a peer using "asymmetric, or public key, cryptography" (Introduction). A certification authority (CA) is a characteristic of many public key infrastructures and the CA attests that a particular key belongs to a particular client/server (section F). A public key is made public by a CA and is a trusted third party. The identification credential that would be received from the service provider is disclosed in *The TLS Protocol* as being a temporary RSA key. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the method and system for the use of a public key system Devanbu et al. with the authentication system and method of *The TLS Protocol* in order to incorporate authenticating a client/server (Introduction).

Regarding claims 6, 21, and 24:

Devanbu et al. discloses the method and system receiving and sending a program that has been certified to one or more configurations (column 4 lines 25-52), but it does not disclose using a hash function. *The TLS Protocol* discloses using a secure hash function (SHA, MD5, etc.) to ensure the connection is reliable and that the data is unmodified (Introduction). It would have been obvious to one of ordinary skill in

the art at the time of invention to combine the method and system of sending and receiving a certified program of Devanbu et al. with the method and system of using a hash function in order to ensure a reliable connection (*The TLS Protocol* – Introduction).

Regarding claims 7, 22, and 25:

Devanbu et al. discloses a method and system for certifying the use of the program (service) comprises confirming that a chosen configuration is included in a set of values representing the one or acceptable configurations (Figure 6).

Regarding claim 13:

Devanbu et al. discloses a communication device to communicate with a service provider (figure 7) and a trusted platform module (column 4 lines 25-52). Devanbu et al. also discloses the client device providing assurance to the service provider that the service is limited to one or more acceptable configurations (column 4 lines 25-52).

Claims 11, 14, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devanbu et al. and *The TLS Protocol* as applied to claims 8, 13, and 26 above, and further in view of Todd et al. (US 5,867,714).

Devanbu et al. and *The TLS Protocol* teach all of the limitations of claims 8, 13, and 26, but they do not disclose sending and receiving data relating to the one or more acceptable configurations or sending a list of value sets for the one or more acceptable configurations and receiving a confirmation that a specific configuration is being used from the list of acceptable configurations. Todd et al. discloses sending and receiving data relating to the one or more acceptable configurations (column 14 lines 6-36). It would have been obvious to one of ordinary skill in the art at the time of invention to

combine the methods and systems disclosed in Devanbu et al. and *The TLS Protocol* with the method and system of sending and receiving a configuration (Todd et al.) in order to avoid hardware/software conflicts (column 3 line 33-42).

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devanbu et al and *The TLS Protocol* as applied to claims 8 and 13 above, and further in view of Klayh (WO/2000/038089).

Devanbu et al. and *The TLS Protocol* disclose all of the limitations of claims 8 and 13, but they do not disclose choosing from a list of received value sets to the one or more acceptable configurations and sending a confirmation that a chosen configuration is included in the list of acceptable value sets. Klayh discloses choosing a configuration and sending a confirmation that a configuration has been chosen (page 8). It would have been obvious to one of ordinary skill in art at the time of invention to combine the method and system disclosed in claims 8 and 13 with the confirmation system disclosed by Klayh in order to determine whether the configuration is acceptable (page 8).

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Devanbu et al, *The TLS Protocol*, and Todd et al. as applied to claim 27 above, and further in view of Klayh (WO/2000/038089).

Devanbu et al, *The TLS Protocol*, and Todd et al. disclose all of the limitations of claim 27, but they do not disclose choosing from a list of received value sets to the one or more acceptable configurations and sending a confirmation that a chosen configuration is included in the list of acceptable value sets. Klayh discloses choosing a configuration and sending a confirmation that a configuration has been chosen (page 8).

It would have been obvious to one of ordinary skill in art at the time of invention to combine the system disclosed in claim 27 with the confirmation system disclosed by Klayh in order to determine whether the configuration is acceptable (page 8).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art discloses methods and systems for distribution of application updates and system configurations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Turchen whose telephone number is 571-270-1378. The examiner can normally be reached on MTWRF 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walt Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Art Unit: 2109

JRT

A handwritten signature in black ink, appearing to read "Walter D. Griffin", with a stylized flourish at the end.

**WALTER D. GRIFFIN**  
**SUPERVISORY PATENT EXAMINER**